IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL T. BRESLIN	:	
	:	
Plaintiff	:	
	:	
v.	:	NO. 01-CA-7269
	:	
NORTON BRAINARD, et. al.	:	
	:	
Defendants.	:	
	:	
	:	
	:	

MEMORANDUM AND ORDER

YOHN, J. OCTOBER _____, 2002

Plaintiff Michael Breslin brings this action against the Commonwealth of Pennsylvania ("Commonwealth") and other defendants, alleging a deprivation of his federal civil rights under 42 U.S.C. § 1983 (Count I) and a conspiracy to interfere with his civil rights under 42 U.S.C. § 1985(2) (Count II). Presently before the court is the motion of the Commonwealth to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. As set forth below, plaintiff is unable to pursue either claim because the Commonwealth is not a "person" as required under the statutes, and because the Eleventh Amendment protects the Commonwealth from such suits. Accordingly, Counts I and II of plaintiff's complaint will be dismissed as to the Commonwealth.

BACKGROUND

The instant case involves allegations of a conspiracy among some of the union officers, certain union members and the state to violate plaintiff's federal civil rights. The plaintiff, a union member and state and federal parolee,[1] asserts that defendants plotted to revoke his parole after he refused to support their candidate during a battle for control of a local union. The specific facts of plaintiff's complaint are set forth below.

Sometime before February 28, 1999, several individuals allegedly agreed to a scheme in which John Morris ("Morris"), the duly elected leader of Local Union 115 of the International Brotherhood of Teamsters ("Local 115"), would be ousted from certain union leadership positions. Compl. ¶¶ 19, 20. In order to accomplish this goal, these individuals struck a deal with James P. Hoffa ("Hoffa"), the president of the International Brotherhood of Teamsters ("IBT"). Under the arrangement, if Hoffa imposed an emergency trusteeship on Local 115, and thus enabled local union members and officers to oust Morris from his leadership positions, then Hoffa would be allowed to fill these vacancies with "his people." Id. at ¶ 20. Plaintiff, who had joined Local 115 as a condition of his parole, was informed of this arrangement on February 28, 1999. He was asked for his support, but he declined to provide it. Id. at ¶ 20, 31. Plaintiff's refusal to offer his support, however, did not thwart the plan. On November 15, 1999, Hoffa, as promised, imposed an emergency trusteeship on Local 115, effectively ousting Morris from his union positions. Id. ¶ 22.

One week after the change in leadership, union officers Sean Heim ("Heim"), Charles Argeros ("Argeros"), Paul Vanderwoude ("Vanderwoude") and Leo Reilly ("Reilly") went to Huff

[1] Plaintiff served forty months in a federal prison and some time in a state prison for possession of marijuana with the intent to deliver. Compl. at ¶ 31.

Paper Co., where plaintiff was employed, and informed the present Local 115 members who supported Morris that if they did not cooperate with the new IBT leadership they would "not get any representation whatsoever." Id. at ¶ 23. At this time, Heim directly threatened the grandson of Morris with bodily harm. Id. Two days later, plaintiff and six other Local 115 members filed a grievance at the Local 115 Union Hall based on the above statements and threats. Id. at ¶ 24.

In December 1999, the Honorable John R. Padova of this court granted a preliminary injunction sought by Morris with reference to the emergency trusteeship, which led to the holding of trusteeship hearings by the IBT from January through early March 2000. Id. at ¶ 26, 27. These hearings were held in order to meet the IBT's requirements for imposing an emergency trusteeship. Id. ¶ 27. During the pendency of these hearings, plaintiff and other Local 115 members, believing the trusteeship was imposed for inappropriate reasons and that the IBT hearings were "a kangaroo court," picketed outside the Local 115 Union Hall. Id. ¶¶ 28, 29.

On March 14, 2000, in response to the preceding events, plaintiff filed charges with the National Labor Relations Board ("NLRB"). Id. ¶ 30. One of the charges cited the threats that had been made to Morris' grandson. Id. The NLRB then scheduled a meeting with plaintiff for May 5, 2000. Id. The purpose of the meeting was for plaintiff to provide testimony and sign an affidavit in support of the charges. Id.

On May 3, 2000, plaintiff attended his regularly scheduled meeting with his federal probation officer, Magdelyn Baez ("Baez"). Id. at ¶ 32. At the meeting, Baez informed plaintiff that Norton Brainard ("Brainard"), the attorney for Local 115, had sent her a videotape of him on the picket line and that Brainard claimed that this behavior was a violation of plaintiff's supervised release. Id. Although Baez did not believe that plaintiff had violated the terms of his federal supervised release by picketing, she did caution him to be careful about what he said and did on the

picket line. Id. She also indicated to plaintiff that Brainard and Gerald McNamara ("McNamara"), an officer in Local 115, had been seeking his arrest for the past six months. Id. The next day, David Knorr, plaintiff's state parole agent, left a citation at plaintiff's home directing him to appear at Knorr's office on the following day, May 5, 2000, which also happened to be the day that plaintiff was scheduled to provide testimony at the NLRB meeting. Id. at ¶ 33.

When plaintiff arrived at Knorr's office on May 5, 2000, he was arrested and put in a holding cell. Id. at ¶ 34. Approximately ten minutes after being placed in the holding cell, Knorr arrived and said: "You don't have a clue why I'm arresting you. . .. Because you are a f------ goon and thug for Johnny Morris and you're a– is going to jail and let's see him get you out of this." Id. at ¶ 35. While plaintiff was in the holding cell, Knorr conducted an allegedly illegal search of plaintiff's car. Id. at ¶ 36. During that search, three utility knives and a cell phone were found. Id. At 2:00 p.m., Knorr and four parole officers took plaintiff to his home where they conducted an allegedly illegal search of his house. Id. at ¶ 37. Nothing was found during the search of plaintiff's home. Id. Plaintiff was then sent to Gratorford Prison, where he remained for one week while Knorr prepared the parole violation charges against him. Id. at ¶ 38.

Plaintiff was subsequently charged with four violations of his state parole. Id. Upon being informed of these charges, plaintiff requested a full parole panel hearing, which was granted and set for June 6, 2000. Id. at ¶ 39. Shortly before the hearing date, an additional charge was brought against plaintiff based on an allegation by William Oswald ("Oswald"), a member of Local 115, that he had been threatened and harassed by plaintiff at work. Id. At the June 6, 2000 parole hearing, Oswald provided allegedly false testimony consistent with his allegation of plaintiff's assaultive behavior. Id. at ¶ 40. Based on this testimony, the parole board revoked plaintiff's parole and incarcerated him for thirteen months, causing him to lose his job with Huff Paper Co.

Id. at ¶¶ 4, 41.

Based on the aforementioned events, on December 31, 2001, plaintiff filed the instant complaint against the Commonwealth and other defendants. Plaintiff alleges that the Commonwealth and various other defendants violated and conspired to violate his federal civil rights. Presently before the court is the Commonwealth's motion to dismiss plaintiff's Section 1983 and 1985 claims pursuant to Rule 12(b)(6).

STANDARD OF REVIEW

In ruling on a motion to dismiss for failure to state a claim upon which relief may be granted, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, and must determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." Nami v. Fauver, 82 F.3d 63, 65 (3d Cir.1996) (citations omitted). Claims should be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). But a court need not credit a complaint's "bald assertions" or "legal conclusions" when deciding a motion to dismiss. In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1429-30 (3d Cir.1997) (citations omitted).

DISCUSSION

Plaintiff's civil rights claims under Sections 1983 and 1985 fail for two reasons. First, states are not subject to liability under the statutes. While both Section 1983 and 1985 expressly

provide that only "persons" may be held liable,[2] states do not qualify as "persons." The United States Supreme Court has expressly held that states are not "persons" under Section 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989). Courts are in agreement that this same analysis applies to use of the word "person" in Section 1985. Sykes v. California, 497 F.2d 197, 201-02 (9th Cir. 1974); Rode v. Dellarciprete, 617 F. Supp. 721, 723 (M.D. Pa. 1985); Flesch v. Eastern Pennsylvania Psychiatric Institute, 434 F. Supp. 963, 975 (E.D. Pa. 1977). As a state, the Commonwealth is not a "person" under Section 1983 nor 1985.

Second, the Eleventh Amendment bars plaintiff's claims against the Commonwealth. The Eleventh Amendment prohibits Section 1983 and 1985 suits for monetary damages against state governments in federal court absent waiver by the state or valid congressional override. Kentucky v. Graham, 473 U.S. 159, 169 (1985); Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 101 (1984). By statute, the Commonwealth has specifically refused to waive its sovereign immunity. See 42 PA.C.S. § 8521 (1998) ("Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.") Nor has there been any valid congressional override of the Eleventh Amendment by either Section 1983 or 1985. See Quern v. Jordan, 440 U.S. 332, 345 (1979) (concluding that Section 1983 does not override the protections of the Eleventh Amendment because "§ 1983 does not explicitly and by clear language indicate on

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[2] Section 1983 makes it unlawful for any "*person* who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, [to] subject, or cause[] to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983 (emphasis added).

Section 1985(2) makes it unlawful for "two or more *persons* [to] conspire for the purpose of . . . obstructing . . . justice in any State . . . with intent to deny to any citizen the equal protection of the laws." 42 U.S.C. § 1985 (emphasis added).

its face an intent to sweep away the immunity of the States; nor does it have a history which focuses directly on the question of state liability and which shows that Congress considered and firmly decided to abrogate the Eleventh Amendment immunity of the States"); Seeny v. Kavitski, 866 F. Supp. 206, 209 (E.D. Pa. 1994) ("It is also well settled that Congress did not intend to abrogate Eleventh Amendment immunity when it enacted § 1985.") (citing Quern, 440 U.S. at 339-346). Thus, the Commonwealth properly asserts its sovereign immunity under the Eleventh Amendment in the instant action. Accordingly, plaintiff's Section 1983 and 1985 claims will be dismissed as to the Commonwealth.

CONCLUSION

As set forth above, plaintiff's claims against the Commonwealth will be dismissed. Plaintiff's Section 1983 claim fails because the Commonwealth is not a "person" as required under the statute, and because the Eleventh Amendment protects the Commonwealth from such suits. Plaintiff's Section 1985 claim fails for the same reasons. In light of the above, Counts I and II of plaintiff's complaint will be dismissed as to the Commonwealth. An appropriate order follows.

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	:	NO. 01-CA-7269
v.	:	
NORTON BRAINARD, et. al.	:	
Defendants.	:	

ORDER

And now, this _____ day of October, 2002, upon consideration of the plaintiff's complaint (Doc. 1); the motion of the Commonwealth of Pennsylvania to dismiss the complaint as to Counts I and II pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief may be granted against it (Doc. 6); and the plaintiff's response (Doc. 26), it is hereby ORDERED that the Commonwealth of Pennsylvania's motion to dismiss is GRANTED and the Commonwealth of Pennsylvania is dismissed as a party to this action.

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William H. Yohn, Jr., Judge